

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 680 of 1993

with

CRIMINAL APPEAL No 725 of 1993

with

CRIMINAL APPEAL NO. 803 OF 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and

MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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TOUFIK AHMED FAUZDAR ANSARI

Versus

STATE OF GUJARAT

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Appearance:

1. Criminal Appeal No. 680 AND 803 of 1993

MR KG SHETH for Petitioner

MR A.J.DESAI, ADDL.PUBLIC PROSECUTOR for Respondent

2. Criminal AppealNo 725 of 1993

MR JM PANCHAL for Petitioner

MR A.J.DESAI, ADDL.PUBLIC PROSECUTOR for Respondent

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CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE A.L.DAVE

Date of decision: 23/09/98

ORAL JUDGEMENT Per:Bhatt,J.

Again travesty of a women has surfaced in this group of three appeals which radiates echo of a woeful tale of stigmatised,victimised young girl who became the victim of a gang rape and grave sexual torture .

All these three appeals have arisen out of a common judgment and order recorded against the appellants who are the original accused persons in Sessions case No. 295 of 1991 and Sessions case No. 113 of 1992 , passed by the learned Additional City Sessions Judge, Ahmedabad on 11.6.1993 holding each of the accused guilty for the offence punishable under Section 366 of IPC and sentencing R.I. for five years and to pay a fine of Rs 1000/- , and R.I.for ten years and fine of Rs.2000/for the offence punishable under Section 376 (2) (g) of the IPC and in default of payment of fine, to suffer R.I.for six months more for each offence, and also holding them guilty for the offences punishable under Sections 363 and 342 ,IPC without recording separate sentence on that count.

A short resume of material and relevant facts leading to rise of these three appeals needs narration at the outset, so as to appreciate the merits of the appeals and challenge against them.

The appellants in criminal appeal No. 680/93 and appellants in criminal appeal No. 803 OF 1993 were tried in Sessions case No. 295 OF 1991 arising out of C.R. I-233/90;whereas appellant in criminal appeal No. 725/93 is the original accused in Sessions case No. 113/92 arising out of the same C.R. No., who are hereinafter referred to as the accused, for brevity and convenience sake, as they were arraigned in the trials; whereas, the respondent in all the three appeals is common complainant-State of Gujarat.

The accused persons were sent up for trial before the learned trial Judge who were charged for having committed offences punishable under Sections 366,342,452,504 read with Section 34,IPC. In view of the allegations and facts of the prosecution case, it was alleged that on 15.5.1990 at about 3.30 a.m. in the early morning on railway platform No.12 of Kalupur railway station, Ahmedabad.,the accused persons committed the offences.

The prosecution case has been that on that day, in the early morning at 3.30 a.m. complainant, one Ramsingh and victim minor girl Madhu (Manisha), the sister-in-law of Ramsingh had come to Ahmedabad. They were waiting on platform No.12 for boarding the train going to Sabarmati. The accused persons went there and forcibly caught Madhu, pressing her mouth and giving threat at the point of knife that she should not shout, else, she will be killed, with intention to commit rape on her. The accused persons kidnapped her from the custody of the complainant Ramsingh in a nearby school building by breaking open the gate of the said school building and thereafter, committed rape on minor Madhu at the point of knife. The accused persons then took the minor Madhu to the terrace of the school building where all the three accused, one by one, committed rape on her. Subsequently, she was brought down in a small room of the school building on the ground floor and committed again rape on her. After committing rape on minor Madhu, the accused persons left her at Ahmedabad Bus station from where she had to go back to her house in Panch Mahals district. / In the meantime, scared and threatened complainant Ramsingh lodged a complaint immediately after the incident before the railway police station, Ahmedabad. The police tried to rescue minor Madhu and trace her out, but did not succeed.

Pursuant to the complaint lodged by the complainant, investigation commenced and the accused persons were extensively searched. Minor Madhu had gone to her parental home after sudden, horrible sexual harassment. She was sent to the medical officer who examined her on 19.5.1990 and thereafter collected the medical certificate of Dr. R.B. Shah and recorded statements of witnesses. Upon completion of the investigation into the offences registered with C.R.I 233/90, A-1 Zakir Husein, and A-2 Toufik were firstly charge sheeted and were tried in Sessions case No. 295 of 1991 for the alleged offences punishable under Sections 504, 363, 366 read with Section 34, IPC and also for offences under Sections 376 (2)(g), 342 read with Section 34 and Section 452 read with Section 34, IPC and also for offence under Section 135 (1) of the Bombay Police Act. A-3 Mohomed Yunus who surrendered before the police was later on charge sheeted and was tried in Sessions case No. 113 of 1992.

The charge, exh.3 in Sessions case No. 295/91 and charge, exh.2 in Sessions case No. 113/92 were denied and the accused persons thus pleaded not guilty and claimed to be tried.

In order to substantiate and fortify the charges against the accused , the prosecution relied on 15 witnesses.The prosecution also relied on documentary evidence to which reference will be made as and when required at appropriate stage by us. Even after recording the evidence of prosecution, the accused persons in their further submissions raised the plea of total denial.

The trial court, upon assessment and evaluation of the evidence of the prosecution, accepted the case of prosecution and held the accused persons guilty after a joint trial of offences under Sections 363, 366,376 (2) (g) and 342 read with Section 34 and convicted each of them for the same , acquitting them of the offences under Sections 452 and 504 I.P.C. and also under Section 135(1) of the Bombay Police Act,vide the impugned common judgment and order recorded on 11,6,1993 which is questioned by the accused separately in this group of three appeals which are jointly heard and are being disposed of by this common judgment.

The learned advocates for the accused have criticised the conviction and resultant order of sentence against the accused raising the following submissions:

- (i) That the accused persons are wrongly implicated;
- (ii) That the case of the prosecution is not proved beyond reasonable doubt highlighting that the prosecution case is not reinforced by independent witness or any other reliable evidence;

It was also contended that in a public place like the railway platform in the summer season when many persons are frequently visiting and were available, the prosecution story, that the victim was gagged and taken to nearby school building situated half a k.m.away from the railway station and having committed gang rape without raising any shout or resistance and more so in absence of any complaint from the school authority or any support from any independent witness though the victim was taken to a lady after the alleged incident was over in the early morning on the same day in thickly populated residential area,is highly unbelievable.

The aforesaid contentions and submissions raised on behalf of the appellants have been countenanced by the learned Additional P.P. Mr.Desai and he has vehemently supported the common judgment and order recorded in each sessions case against the accused.

We have also extensively and dispassionately examined and scrutinised the prosecution evidence in general and the evidence of the prosecutrix victim Madhu, complainant-Ramsingh. medical evidence of Dr.. R.B.Shah and other relevant documentary evidence in particular. After having heard and having read the entire testimonial collections and documentary evidence, we have been unable to accept any of the contentions raised on behalf of the appellants-accused. On the contrary, we are satisfied that the impugned common judgment and order holding the accused guilty is quite justified.

P.W.1 Madhuben examined at exh. 24 has clearly and consistently testified revealing volumes against the heinous and ghastly gang rape committed by the accused persons after kidnapping her from the custody of her brother-in-law ,complainant-Ramsingh from platform No.12 of Kalupur railway station on 15.5.1990 in the early morning. It is noticed from her testimony that it not only radiates an imprint of truth and only truth but reveals horrible tale-tell of the offences she was subjected to ,committed by the accused persons. It leaves no manner of doubt in our mind even by reading the evidence of minor Madhu who is a rustic and belonging to poor strata of society and not even fully literate ,visiting ,for the first time, a metropolitan city like Ahmedabad,that it will be an unforgettable event in her whole life as she became the victim of kidnapping and gang rape committed by the accused persons as if they are habitual offenders indulging in such atrocious crimes. Minor Madhu was just of tender age of 16 who,at the threshold of her youth was subjected to gang rape and unfortunately,instead of enjoying youthful spring years of life,was thrown and fallen in the autumn period. By systematic heinous incriminating condemnable joint venture of the accused after having raped her discriminately, the only indelible impression which one would carry would be that of a delicate deer having been vociferously,violently attacked by a wolf. She was silenced not only by a trauma but by use of force and threat of taking her life with knife. The manner and mode in which she has deposed before the court is nothing but representing a true,correct, consistent and coherent version of the main core of the prosecution case. Though she had become the victim of violent crime of being abandoned mercilessly on the bus station at Ahmedabad alone, and helpless, made a way and went to her parental home and narrated the horrible and unforgettable accused-made episode to her parents.

The evidence of victim Madhu which not only fully inspires confidence and which solely is sufficient to

base conviction, is significantly reinforced by the evidence of the complainant P.W.2- Ramsingh, her brother-in-law (her sister's husband). The complainant, as such, was also left with no alternative but to run and rush for the rescue to the police and save life of her sister-in-law, who immediately went to the railway police station and lodged the complaint produced at exh. 26. The version narrated by the complainant and recorded by the railway police station, Ahmedabad within minutes also supports the evidence of minor Madhu.

It becomes very clear from the testimony of the complainant that the accused persons forcibly shutting mouth of the victim and making the complainant to shut his mouth by giving threat with knife which was also systematically wrapped in a newspaper, took away the victim Madhnu. What natural conduct of an ordinary person would be in such a factual situation the complainant was placed in ? He acted naturally and had no alternative but to report it to the police as he was rendered helpless to give any help to the minor Madhu who was forcibly not only snatched away from his guardianship but was also subjected to criminal intimidation by the accused persons. It is evidently noticed by us from his testimony that in order to not only making him helpless but also to see him totally silenced, he was systematically not only traumatised but was threatened to be killed by knife which was wrapped in a newspaper. His evidence is fully reinforced and corroborated by his complaint which was immediately lodged without loss of any time. The prosecution has, therefore, successfully led evidence of the complainant which fully corroborates the testimony of the victim Madhu.

Not only that, the medical evidence of Dr R.B.Shah who had examined minor Madhu on 19.5.1990 in the Civil Hospital, Ahmedabad also corroborates the prosecution case and the testimony of the prosecutrix. He is P.W.6 who is examined at exh. 32. After having even a peep into his evidence, it leaves no manner of doubt in our mind that minor Madhu who was virgin was subjected to violent gang rape. The submission that in absence of semen stains or other marks on the private part of the victim, reliance cannot be placed on the testimony of the victim as she could be legitimately inferred to be a consenting party, being farthest from truth, is totally not only unreasonable but illogical, for the simple reason that she came to be medically examined four days after she became victim of macabre crime . This submission overlooks the report of forensic science laboratory wherein, it has been clearly found upon serological test that blood,

semen marks were noticed on the undergarments of the victim. The forensic science laboratory reports also fully support the oral evidence of minor Madhu.

In view of narration of the relevant facts and discussion of material aspects emerging from the record of the case, which we have made hereinabove, the submissions raised on behalf of the defence articulated hereinabove, are totally not only misconceived but are baseless leaving us with no alternative but to concur and confirm the verdict of the trial court founded upon correct evaluation and proper assessment of testimonies and documentary evidence relied on by the prosecution. As we have observed above, the single testimony of minor Madhu ipso facto is efficient and sufficient to transfix culpability of the accused persons they were charged with; whereas, the prosecution has successfully established from the record that she is fully justified and corroborated by the evidence of the complainant, Ramsingh coupled with the medical evidence of Dr R.B.Shah and the report of the forensic science laboratory.

In the result, we find that this group of three appeals at the instance of the appellant-accused who are not only guilty of the offences they are charged with but are also guilty of social trauma victimization suffered by minor Madhu in the prime of her youth, are totally meritless requiring dismissal and only dismissal and nothing but dismissal. They are accordingly dismissed.

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